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Ratepayer Advocate
and Director

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DOCKET FILE COPY ORIGINAL

September 24, 1997

VIA FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Public Notice released September 10, 1997 (DA 97-1957)
Common Carrier Bureau Seeks Comment on Universal Service Support
Distribution Options for Schools, Libraries and Rural Health Care
Providers
CC Docket No. 96-45

TO THE HONORABLE COMMISSION:

Enclosed please find an original and five copies of formal comments submitted by the New Jersey Division of the Ratepayer Advocate to be filed with the Commission in the above-referenced matter. Please time/date stamp the additional copy and return it to the undersigned in the enclosed, stamped envelope.

Respectfully submitted,

Blossom A. Peretz, Esq.
Ratepayer Advocate

By: Lawanda R. Gilbert
Lawanda R. Gilbert, Esq.
Assistant Deputy Ratepayer Advocate

Encl.

cc: Sheryl Todd, Universal Service Branch, Accounts and Audits Division, FCC
International Transcription Service

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 25 1997

FCC MAIL ROOM

IN THE MATTER OF

FEDERAL-STATE JOINT-BOARD ON
UNIVERSAL SERVICE

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CC Docket No 96-45
Public Notice DA 97-1957

**COMMENTS OF
THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

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INTRODUCTION

On May 8, 1997, the Federal Communications Commission ("FCC") issued its *Report and Order*¹ on universal service ("Universal Service Order" or "Order"), which promulgated rules for the implementation of funding to provide discounts on telecommunications service for eligible schools, libraries and health care facilities. As provided under the Order, eligible institutions will be permitted to receive funding based upon a first-come first-served basis beginning January 1, 1998, with the level of funding available capped annually at \$2.25 billion. On September 10, 1997, the FCC Common Carrier Bureau released a Public Notice seeking comment on universal service support distribution options for schools, libraries and rural health care providers. Pursuant to this Public Notice, the New Jersey Division of the Ratepayer Advocate² herein submits our comments on the issues raised therein.

The Public Notice requested comment on several issues regarding the potential for the exhaustion of funds, based upon concerns expressed about distributing support to schools, libraries and rural health care providers on a first-come first-served basis. The Ratepayer Advocate shares the concerns expressed regarding the effect that the distribution of funds on a first-come first-served basis will have on the ability of the funding needs of schools, libraries, and rural health care providers to be fully met through the federal universal service fund.

¹ Federal State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997).

² The Ratepayer Advocate is a newly reorganized agency pursuant to the New Jersey Reorganization Plan No. 001-1994. Our role, to protect and advance the interest of residential ratepayers in New Jersey, has been broadened to include representation of all classes of ratepayers -- residential, commercial and industrial-- and to be more involved in the policy and planning of laws and regulations which impact all New Jersey ratepayers. Our new mandate in the area of policy and planning is designed to afford the consumer a stronger voice in long range utility planning for the state.

Clearly, under such a program, the success of an institution's application is not based upon the need demonstrated, but on the speed with which the application is filed. The concern regarding the possibility that the influx of requests for funding could be exceeded by the amount of available funding is considerably heightened in light of the fact that only \$1 billion will be available for schools and libraries for the first six months of the funding period, and that, the final \$250 million will be distributed based upon the rules of priority.³ Schools and libraries could be lulled into a false sense of security if they depend upon the availability of funds to meet the need as documented in their applications, only to discover that the funds have been expended before their application has been considered.

For example, in its Strategic Technology Plan, the Board of Education for New York City has estimated that they will require \$285,000,000 just to provide wide-area network installation.⁴ If several large urban areas with a size and population density similar to that of New York City were to file applications on a district-wide basis early in the process, it is possible that a large portion of the funds could be exhausted very rapidly.

The Public Notice requests comment on the suggestion of the establishment of a "window" period, in which all beneficiaries filing within that period would be given equal priority. Such a "window" period could be useful in placing schools and libraries on more equal footing when filing, so that a school or library doesn't have to be as concerned regarding the exact timing of the filing of their application. For instance, under the current system, the timing

³ See 47 C.F.R. §54.507(f).

⁴ Table 4-1: Five Year Budget Estimates, *Strategic Technology Plan*, The Board of Education of the City of New York (June 1997).

of an application and the subsequent availability of funding could be determined by the time of day in which the courier service delivered the package to the universal service fund administrator, or as to whether the application was on the top or the bottom of the group of applications received within a given day. Additionally, since the funding application is not yet available, a school or library may find it very difficult at this point to determine how quickly they may be able to complete the application once it is released, and whether their request for funding will be granted. With a window period, schools or libraries could be provided with more sufficient indications as to where their request may fall within the queue and thus, better estimate the success of their ability to obtain appropriate funding based upon how many applications were received within the window period, and how many applications have been received prior to the window period in which their application was filed.

The Public Notice also seeks comment on whether other methods might ensure a broad and fair distribution of funds, particularly at the earliest stages of these support programs. The Ratepayer Advocate is pleased that the FCC has noted its awareness of the possibility that the use of the first-come first-served mechanism currently does not provide an ability to ensure the distribution of funding in an equitable fashion. Indeed, the Ratepayer Advocate raised this concern in our Petition for Clarification and Reconsideration of the Universal Service Order ("Petition"), filed on July 16, 1997 (see Attachment), in which we requested the FCC to clarify the current distribution scheme and provide guidelines that will ensure equity in the distribution of the funds among the states. As stated in our Petition, in light of the possibility of the exhaustion of funds, there is no certainty that the current funding scheme can provide that schools and libraries from each state will receive any portion of funding, or that each state will

receive a pro rata share of funding. Additionally, since schools or libraries may apply for funds on an individual basis, by school district, by state, or by consortium, it is possible that several petitions for funding could be received from the schools or libraries in one state. For example, if the 600 school districts in New Jersey simultaneously filed individual applications for funding for each district, it is unclear how those applications would be assessed against a single statewide application for all of the school districts in one state.

In light of the fact that the federal universal service fund includes contributions assessed partly on intrastate telecommunications revenues⁵, states are clearly concerned that mechanisms be provided which will allow for states to recoup some share of funding relatively equivalent to an amount which they have contributed. Since no action has been taken by the FCC to our knowledge on the Ratepayer Advocate's previously filed Petition, the Ratepayer Advocate herein renews its recommendations in these comments, and requests that the FCC issue clarifying guidance to the fund administrator so that the amount of funding provided by individual States be considered when acting upon the funding request for discounts from schools and libraries.

⁵ "Every telecommunications carrier that provides interstate telecommunications service, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for eligible schools, libraries and health care providers on the basis of its interstate, **intrastate**, and international end-user telecommunications revenues." 47 U.S.C. §54.703(b). (emphasis provided)

CONCLUSION

The concerns referenced in the Public Notice are indeed important issues that should be resolved as soon as possible to provide for an efficient yet equitable funding mechanism for the distribution of assistance to the nation's schools, libraries and health care facilities. The Ratepayer Advocate believes that with the establishment of prudent guidelines for the fund administrator which address equitable funding among the states, such as requested in our Petition, the universal service fund will have a greater chance of offering all K-12 schools and public libraries affordable access to advanced telecommunications services.

Respectfully submitted,

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New Jersey Division of the Ratepayer Advocate

By: Lawanda R. Gilbert
Lawanda R. Gilbert, Esq.
Assistant Deputy Ratepayer Advocate

Dated: September 24, 1997

ATTACHMENT

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

IN THE MATTER OF

**FEDERAL-STATE JOINT-BOARD ON
UNIVERSAL SERVICE**

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CC Docket No 96-45

FCC 97-157

PETITION FOR RECONSIDERATION AND CLARIFICATION

**NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE
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INTRODUCTION

Pursuant to 47 C.F.R. § 1.429, the New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") respectfully submits this Petition for Reconsideration and Clarification of certain sections of the Federal Communications Commission's (FCC) *Report and Order*, FCC 97-157, issued *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. ("Universal Service Order" or "Order"). The Order promulgates rules to implement the universal service requirements of the Telecommunications Act of 1996, 47 U.S.C. §151 et seq. ("Act"), and is the final process of the continuing FCC proceeding to implement the universal service provisions of the Act.

The Ratepayer Advocate is a newly reorganized agency pursuant to the New Jersey Reorganization Plan No. 001-1994. Our role, to protect and advance the interest of residential ratepayers in New Jersey, has been broadened to include representation of all classes of ratepayers -- residential, commercial and industrial-- and to be more involved in the policy and planning of laws and regulations which impact all New Jersey ratepayers. Our new mandate in the area of policy and planning is designed to afford the consumer a stronger voice in long range utility planning for the state.

On March 8, 1996, the FCC released a *Notice of Proposed Rulemaking and Order Establishing Joint Board*¹ which initiated the Federal-State Joint Board on Universal Service ("Joint Board") and the subsequent review procedure to implement the universal service provisions mandated under the Telecommunications Act. Subsequently, the Joint Board

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-25 (61 Fed. Reg. 10499 (1996)).

released its Recommended Decision on November 8, 1996.² As required by the Act,³ the FCC completed the review proceeding on May 8, 1997 with the release of its Report and Order containing the final rules.⁴

The Ratepayer Advocate requests that the FCC: 1) reconsider the proposed utilization of unused funds accumulated for purposes of affording discounts for telecommunications services to schools and libraries; and 2) clarify its stated "first come-first served" policy for funding benefits to schools and libraries, to ensure equitable distribution of monies among all states contributing to the fund.

I. THE COMMISSION SHOULD CLARIFY THE UTILIZATION OF UNUSED FUNDS FOR CALENDAR YEARS 1998 AND 1999 ALLOCATED TO PROVIDE DISCOUNTS FOR SCHOOLS AND LIBRARIES TO ENSURE THAT INTRASTATE JURISDICTIONAL REVENUES DO NOT REVERT TO THE F.C.C.

Section 254(d) of the Telecommunications Act provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."

² Recommended Decision, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-25 (61 Fed. Reg. 63778 (December 2, 1996)). The FCC also released a Public Notice on November 18, 1996 (61 Fed. Reg. 63778 (December 2, 1996)) seeking public comment on rules to implement the universal service provisions of the Act.

³ 47 U.S.C. 254(a)(2).

⁴ Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-25. The final rules were printed in the Federal Register on June 17, 1997. (62 Fed. Reg. 32862)

Included among the services which will be supported from these contributions are the discounts for telecommunications services provided to schools and libraries, as mandated by the Act.⁵

With respect to unused funds, Section 54.507(a) of the Final Rules contained in the Universal Service Order requires that they are to be carried forward to the following year, except for two cases:

[N]o more than half of the unused portion of the funding authority for calendar year 1998 shall be spent in calendar year 1999, and no more than half of the unused funding authority from calendar years 1998 and 1999 shall be spent in calendar year 2000.

62 Fed. Reg. 32956.

Thus, in the event that the total amount of funds collected for the calendar years 1998 and 1999 are not fully expended, the Order states that only 50% of the unused funds can be allocated to the funding requirements for the following year. However, the Order does not provide any information on the utilization of the other half of those unused funds. The current wording of the rules would lead one to conclude that the remaining portion of the unused funds that are not carried over to the following year would remain with the fund administrator, and could possibly revert to the FCC. It is unclear from the Order for what purpose the remaining funds will be used.

This issue is of particular concern for the States due to the requirement of Section 54.703 of the Final Rules of the Universal Service Order that the contributions to be collected from the telecommunications carriers for the support of discounted services for schools and libraries will be assessed "on the basis of its interstate, **intrastate**, and international end-user

⁵ 47 U.S.C. 254(h)(1)(B).

telecommunications revenues.”⁶ A review of statistics regarding telecommunications industry revenue indicates that intrastate revenues, on a whole, constitutes more than interstate and international revenues combined. In 1995, the FCC reported that carriers classified 43.3% of their revenue as interstate (including international), with the remaining 57% of revenues being intrastate jurisdictional revenues.⁷ Thus, the majority of funding provided for school and library discounts will be derived from intrastate revenues,⁸ which traditionally have been the exclusive province of State regulatory authority.

While States, through their approval of the FCC’s discount matrix, are thereby permitting the FCC to reach into intrastate jurisdictional funds for purpose of funding discounts to schools and libraries, they are not intending to contribute their jurisdictional monies for support of other federal purposes. Excess funds (unspent funds) should continue to be fully available to the States for funding future discounts to schools and libraries. If the FCC’s funding mechanism is unable to fully expend State jurisdictional monies for these purposes, the funds should be restored to the States from which the funds were accumulated in order that State regulatory authority may use these monies for public purposes.

The Ratepayer Advocate therefore requests that the FCC reconsider and revise these provisions of its Order to provide specific guidance for proper disposition of intrastate

⁶ 62 Fed. Reg. 32961.

⁷ Federal Communications Commission, *1995 Telecommunications Industry Revenue Data from Telecommunications Relay Services Worksheets*, Common Carrier Bureau, Industry Analysis Division (released 12/96).

⁸ 62 Fed. Reg. 32909 (¶340).

jurisdictional revenues that remain unspent for calendar years 1998 and 1999, and delineate a process for the States being able to reclaim these funds.

II. THE COMMISSION SHOULD CLARIFY THE CURRENT DISTRIBUTION SCHEME FOR FUNDING DISCOUNTS FOR SCHOOLS AND LIBRARIES AND PROVIDE GUIDELINES THAT WILL ENSURE EQUITY IN THE DISTRIBUTION OF THE FUNDS AMONG THE STATES.

Section 54.507(c) of the Final Rules in the Universal Service Order provides that:

“Funds shall be available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come-first-served basis”.⁹ Thus, the success of a school or library in being awarded funding is partly based upon their speed in the filing of their application. That success however, is also affected by the fact that the Final Rules cap the amount of funds which can be provided at \$2.25 billion.¹⁰ Additionally, there are special provisions which reserve the final \$250 million allocated for a funding year to the most economically disadvantaged schools and libraries.¹¹

In light of this procedure and the pressing needs of education throughout the nation, it appears possible, perhaps even likely, that a given State whose intrastate revenues were assessed for contributions to the universal service fund would not receive any funding for a particular year, if applications from schools or libraries of that State were not assigned a high enough priority prior to the exhaustion of the available funding. Thus, currently there is no certainty

⁹ 62 Fed. Reg. 32956.

¹⁰ See 47 C.F.R. §54.507(a).

¹¹ See 47 C.F.R. §54.507(f).

that each state will be able to recoup some portion, or indeed, any portion of its share of contributions paid into the universal service fund. Although the FCC's proposed procedure attempts to distribute available funds fairly on a first-come-first-served basis, in reality, it leaves room for inequity among the states since there is no acknowledgment that each State will be able to receive an adequate amount, or indeed, any amount of funding.

The Universal Service Order currently does not contain any guidance that there should be some consideration accorded between the amount which States contribute to the fund, relative to the amount which they will receive. The lack of such an assurance may bring into question the ability of a State to place its support behind such a system without any balance to provide for some measure of equitable distribution among the States; and may make it difficult, if not impossible, politically to support the current structure. While a precise dollar-for-dollar correlation between funds received and funds disbursed for each State may not be necessary, guidelines to the fund administrator to ensure that every State contributing to the fund derives some benefit roughly comparable to its contribution would be in order.

The Ratepayer Advocate therefore requests that the FCC review the provisions contained in the current funding scheme and issue clarifying guidance to the fund administrator, directing that the amount of funding provided by individual States be considered when acting upon funding requests for discounts from schools and libraries. Only in this matter can States be reassured that the needs of all States and individual constituents are being met on an equitable basis.


CONCLUSION

The Final Rules provide that funding for discounts for schools and libraries will be provided by assessments from telecommunications carriers based upon both their interstate and intrastate revenues. Intrastate revenues have traditionally been the exclusive jurisdiction of the respective State regulatory commissions. To the extent that individual States permit the FCC to assess intrastate revenues for purposes of creating the federal universal service fund for the support of schools and libraries, State jurisdictional funds should be used exclusively for that purpose and unspent funds should not revert to the federal government.

Currently, the rules are unclear as to what the States will receive under the fund in two separate areas: 1) the rules provide no assurance that the intrastate portion of unused funds will either be carried over to the following calendar year or will be returned to the States; and 2) the rules do not provide for equitable distribution of the funding for schools and libraries across the States, based upon the funding provided by the States through their respective intrastate revenues. The FCC should clarify these two issues to ensure the integrity of intrastate jurisdictional revenues and equity among the States in the receipt of benefits from the fund.

Respectfully submitted,

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Dated: July 16, 1997